

STATE OF SOUTH CAROLINA  
RICHLAND COUNTY

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

----- X  
Eleanor Kitzman, as Director of the South  
Carolina Department of Insurance,

Petitioner,

vs.

Foundation Insurance Company

Respondent.  
----- X

Civil Action No. 05-CP-40- **4824**  
:  
:  
: **CONSENT ORDER DECLARING**  
: **INSOLVENCY, COMMENCING**  
: **REHABILITATION PROCEEDINGS**  
: **& GRANTING AN INJUNCTION &**  
: **AUTOMATIC STAY OF**  
: **PROCEEDINGS**  
:  
:  
:

FILED  
OCT 7 11 10:07  
CLERK OF COURT  
RICHLAND COUNTY

This matter comes before me pursuant to the South Carolina Insurer's Supervision, Rehabilitation and Liquidation Act [S.C. Code Ann. §§38-27-10. et seq. (2004)] The Petitioner seeks an order appointing her as Receiver of Foundation Insurance Company for purposes of rehabilitation. The Respondent has been served with a copy of the aforementioned Petition pursuant to Section 38-27-60 of the South Carolina Code.

The Court, having reviewed the pleadings of record, having heard presentation of counsel, and otherwise being fully informed in the premises, finds:

1. Respondent was licensed as a South Carolina captive insurance company under Chapter 90 of Title 38 of the South Carolina Code of Laws on March 30, 2001.

2. After applying for conversion to a traditional insurer, Respondent was granted a conditional certificate of authority as a traditional insurer under Section 38-5-10 of the South Carolina Code on August 13, 2003. The Department's August 13, 2003 letter provided that the Director's approval to issue the Certificate of Authority was contingent upon the successful completion of an organizational examination or other examination in order to

determine, among other things, that Respondent had adequate capital and surplus to support its business plan.

3. Respondent was subject to a financial examination by the Department of Insurance. The examination commenced on March 29, 2004, and concluded on June 11, 2004. The examination, among other things, determined that loss reserves held by Respondent were understated by \$14,968,493 and that total capital and surplus of Respondent was (\$15,533,477).

4. On April 12, 2004, the Director suspended Respondent's Certificate of Authority to transact business in this State.

5. On May 17, 2004, the Director ordered that Respondent be placed under the Department's supervision pursuant to the Administrative Supervision of Insurers Act. S.C. Code Ann. Section 38-3-150. Moreover, the Director appointed Linda G. Haralson, the Department's Chief Financial Examiner, as Interim Supervisor of Respondent, vesting her with full authority to apply all applicable statutes and regulations. Said order was amended on October 5, 2004 appointing Steve Matthews as Interim Supervisor and again on May 2, 2005 appointing Dianne Irving as Interim Supervisor.

6. By letter dated August 13, 2004, the Department informed Respondent that the conversion of Respondent from a captive insurance company to a traditional insurer was not effective as it had not complied with the conditions set forth in the Department's August 13, 2003 letter. Additionally, by letter dated August 13, 2004, the Department advised Respondent that it was insolvent and directed that it would remain under the Administrative Supervision of the South Carolina Department of Insurance and in run-off status.

7. S.C. Code Ann. Section 38-27-310 provides the grounds for rehabilitation, including when the company is insolvent and/or when the Board of Directors or a holder of a

majority of the shares of stock entitled to vote requests or consents to rehabilitation. Pursuant to this section of the Code, the Director may apply by petition to the Circuit Court for an Order authorizing her to rehabilitate Foundation.

8. The Court has jurisdiction over this matter.

9. The Respondent is insolvent and in such condition to be hazardous, financially or otherwise, to its policyholders, its creditors and the public.

10. The Board of Directors of the Respondent has authorized its officers to consent to the Order of Rehabilitation and said written consent has been filed with the court.

11. It is in the best interest of Respondent, its policyholders, its creditors and the public that the relief requested in the petition be granted.

**IT IS THEREFORE ORDERD THAT:**

12. PURSUANT TO S.C. Code Ann. § 38-27-310 and 38-27-320(2004), the Petitioner and her successors in office is appointed Receiver for the purposes of rehabilitation of the Respondent.

13. PURSUANT TO S.C. Code Ann. §38-27-330 (2004) Petitioner and her successors shall have all the powers and responsibilities set forth under this section to assist her or her designee as Receiver for Rehabilitation, including but not limited to:

a) Conduct the business of Respondent and take all steps, as the Court may direct, toward the removal of the causes and conditions which have made this Order necessary and take such further action as the Receiver deems necessary or appropriate to reform and revitalize Respondent.

b) Take immediate possession of all the property, assets and estate, and all other property of every kind whatsoever and wherever located, belonging to Respondent.

c) Apply for any restraining orders, preliminary and permanent injunctions, and other orders considered necessary pursuant to S.C. Code Ann. Section 38-27-70.

d) Employ and authorize the compensation of legal counsel, actuaries, accountants, consultants and such assistants as it deems necessary, and authorize the payment of the expenses of these proceedings and the necessary incidents thereof, as approved by the Court, to be paid out of the funds or assets of Respondent that are in the possession of the Receiver or that come into her possession.

14. In the event the Receiver determines that reorganization, consolidation, conversion, reinsurance, merger or other transformation of Respondent is appropriate, the Receiver is directed to prepare a plan to effect such changes and submit the plan to this Court for consideration. Upon petition by the Receiver stating that further efforts to rehabilitate Respondent would be useless, this Court will consider entry of an Order of Liquidation of Respondent without further notice of hearing.

#### **NOTICE OF AUTOMATIC STAY**

15. Notice is hereby given that pursuant to S.C. Code Ann. Section 38-27-70, the Court grants an automatic stay applicable to all persons and proceedings, other than the Receiver, which shall be permanent and survive the entry of the Order and which prohibits:

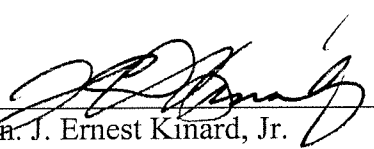
- (a) the institution or further prosecution of any actions or proceedings involving Respondent;
- (b) the obtaining of preferences, judgments, attachments, garnishments, or liens against Respondent, or its assets;
- (c) levying of execution against Respondent or its assets; and
- (d) any other threatened or contemplated action that might lessen the value of Respondent's assets or prejudice the rights of its

policyholders, creditors or shareholders or the administration of  
any proceeding under this Chapter.

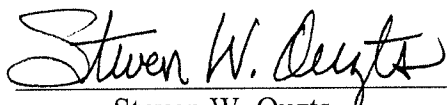
16. This Court retains jurisdiction of this cause for the purpose of granting  
such other and further relief as from time to time may be necessary and appropriate.

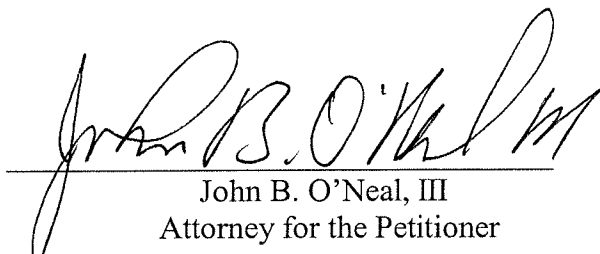
AND IT IS SO ORDERED.

This 3 day of ~~September~~ <sup>Oct</sup> 2005  
Columbia, South Carolina

  
\_\_\_\_\_  
Hon. J. Ernest Kinard, Jr.  
Chief Administrative Judge  
Fifth Judicial Circuit

WE CONSENT:

  
\_\_\_\_\_  
Steven W. Ouzts  
Attorney for the Respondent

  
\_\_\_\_\_  
John B. O'Neal, III  
Attorney for the Petitioner